

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,                     )  
   )  
                          Plaintiff,                     )  
   )  
                  vs.                     ) CASE NO. 3:14-cr-00069-SLG-DMS  
   )  
BOONCHAN YANG,                     )  
   )  
                          Defendant.                     )  
\_\_\_\_\_ )

TRANSCRIPT OF HEARING ON PETITION TO REVOKE SUPERVISED RELEASE  
(DKT 107)  
BEFORE THE HONORABLE DEBORAH M. SMITH, MAGISTRATE JUDGE  
May 28, 2021; 2:06 p.m.  
Anchorage, Alaska

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Transcript Produced by Computer

# I N D E X

May 28, 2021; VOLUME I

Government's Witnesses:	Direct	Cross	Redirect	Recross
Jared Kabulski	4	16	32/47	41
Benjamin Schmidt	50	58	64	
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1 (Call to Order of the Court at 2:06:06 p.m.)

2 DEPUTY CLERK: All rise. Her Honor, the Court, the  
3 United States District Court for the District of Alaska is now  
4 in session with the Honorable Deborah M. Smith presiding.

5 Please be seated.

6 Your Honor, we're on record in Case  
7 Number 3:14-CR-69-SLG-DMS, United States of America versus  
8 Boonchan Yang.

9 Counsel, please identify yourselves for the record.

10 MR. COLLINS: Stephan Collins, United States.

11 MS. STAFT: Gretchen Staft on behalf of Mr. Yang.

12 THE COURT: Thank you. All right. Ms. Staft, this  
13 is your motion; correct?

14 MS. STAFT: No, Your Honor. We are here, I believe,  
15 on a continued evidentiary hearing.

16 THE COURT: That's right. I'm sorry. I tried to get  
17 in to listen to where we were, and my FTR is not working today.  
18 So Mr. Collins, you have another witness to present.

19 MR. COLLINS: Your Honor, when we -- may I remain  
20 seated because of the --

21 THE COURT: Yes, you can.

22 MR. COLLINS: Thank you. We had not excused, passed  
23 Officer Schmidt, but we do now. So our next witness will be  
24 Dr. Kabulski.

25 THE COURT: Okay. Cross examination, Ms. Staft?

KABULSKI - DIRECT

1 MS. STAFF: Your Honor, I believe that I had  
2 completed cross examination of Probation Officer Schmidt at the  
3 time of -- that we ended the last hearing. So no further  
4 questions. Thank you.

5 THE COURT: Okay. So you want to call your next  
6 witness, Mr. Collins?

7 MR. COLLINS: Yes, Dr. Kabulski.

8 THE COURT: All right.

9 DEPUTY CLERK: Mr. Kabulski --

10 DR. KABULSKI: Yes, I'm here.

11 DEPUTY CLERK: -- please raise your right hand.

12 (Oath administered to the witness)

13 DEPUTY CLERK: For the record, please state and spell  
14 your full name.

15 THE WITNESS: It's Jarod Kabulski, J-A-B-U-L-S-K-I  
16 (as spoken).

17 DEPUTY CLERK: Thank you.

18 THE COURT: Mr. Collins?

19 MR. COLLINS: Thank you, Your Honor.

20 JARED KABULSKI, GOVERNMENT WITNESS, SWORN

21 DIRECT EXAMINATION

22 BY MR. COLLINS:

23 Q Dr. Kabulski, for whom do you work?

24 A I work for Clinical Reference Laboratory in Lenexa,  
25 Kansas.

KABULSKI - DIRECT

1 Q And for how long have you done that?

2 A I have been with Clinical Reference Laboratory for over  
3 five years.

4 Q And what is it that the laboratory does?

5 A We are a workplace and forensic drug testing laboratory.

6 Q In addition to the five years that you have had with them,  
7 do you have any prior experience in that field?

8 A Yes, I have ten -- over ten years of experience in  
9 forensics toxicology, both through drug testing and therapeutic  
10 drug monitoring.

11 Q And what -- what is the -- what is your educational  
12 background that allows you to fulfill this function? What did  
13 you do to get your doctorate, I guess is another way of putting  
14 it?

15 A I -- I have my doctorate in pharmaceutical and  
16 pharmacological sciences. I'm also a board-certified forensic  
17 toxicologist through the American Board of Forensic Toxicology.

18 Q Have you ever testified before in any United States  
19 District Court within the District of Alaska?

20 A I have not in Alaska.

21 Q Elsewhere?

22 A Yes.

23 Q Where would that be?

24 A Pennsylvania, Texas are the ones that come to mind, most  
25 recently.

KABULSKI - DIRECT

1 Q Are you familiar with -- I believe it's PharmChek?

2 A Yes. Yes.

3 Q And what --

4 A They are -- they are who provide the sweat patches to us,  
5 and then we provide the -- the testing for those patches.

6 Q Is it part of the same company or -- or is your laboratory  
7 an independent entity from PharmChek?

8 A Yes, we are.

9 Q All right. Is there any business relationship, other than  
10 contractual? Like ownership?

11 A No, the only business relationship is that they contract  
12 their drug testing through Clinical Reference Laboratory.

13 Q The -- the laboratory for whom you work, does it provide  
14 services to the United States Probation Offices throughout the  
15 country?

16 A Yes, we do have multiple clients that use our drug  
17 testing.

18 Q Does that include the District of Alaska?

19 A I believe it does, yes.

20 Q And are you personally and professionally familiar with  
21 the methodology or the protocol that your laboratory follows  
22 when analyzing sweat patches? And am I correct that "sweat  
23 patches" is an acceptable descriptor or is there another --

24 A That is correct. I will use the word "sweat patch". I'm  
25 part of -- both trained in the testing of the sweat patch for

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1 the initial testing, which is the screening, as well as the  
2 confirmation testing. I oversee the certification department,  
3 which is the group that's responsible for reviewing all drug  
4 testing results before they're released for the clients.

5 Q And what are -- what -- if you would, please, what is the  
6 process that your laboratory over which you supervise follows  
7 when it receives a sweat patch from a United States Probation  
8 Office?

9 A For the sweat patches, everything that we do at Clinical  
10 Reference Laboratory follows chain of custody. So we document  
11 every transfer and every handling of that sample from process,  
12 from the moment it arrives at CRL, or Clinical Reference  
13 Laboratory, through all of the different phases of testing and  
14 then through reporting. The procedures that we use for sweat  
15 patch drug testing is we first process the sample through an  
16 initial screen. That is an ELISA technology which looks for  
17 classes of drugs. If that were to screen positive, we use a  
18 secondary method, which is LC MS MS testing, and from there, we  
19 identify the individual drugs and the quantity of drugs based  
20 on the cut-offs that are determined by PharmChem.

21 Q In addition to doing the chemical analysis that you just  
22 described, is there any inspection of the sweat patches to  
23 determine whether or not that they are -- if I say -- valid for  
24 testing?

25 A There is an inspection process by the -- the collector, I

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1 believe in this case the probation officer, who is applying and  
2 removing the patch. As far as an internal inspection, we do  
3 have criteria -- if the patch arrives without the paperwork, if  
4 the patchwork should arrive with the adhesive still on it, or  
5 it was to be in a state that could have exposed it during the  
6 transport process, we would not test that. That would be  
7 considered rejected for testing. That's the criteria we use  
8 before testing any sweat patch samples.

9 Q What would render a sweat patch, I guess -- just trying to  
10 think -- improper or invalid for subsequent chemical analysis?  
11 What kind of physical tampering would you look for?

12 A The only physical tampering that we look for is if the  
13 tape, the protective layer that is placed on the patch, is  
14 still on the patch when it arrives.

15 Q What -- what assures you, as -- and your company, your  
16 laboratory, that the sample that you've received, the sweat  
17 patch you received, has not been exposed externally,  
18 environmentally to any substance for which you're testing?

19 A I can only speak to the analytical testing of the sweat  
20 patch. I can only speak to what was determined to be found on  
21 the patch when it arrives, or after it arrives and we process  
22 through the testing. There is a process that the collector is  
23 required to follow to prevent that contamination, but I can  
24 only speak to what we were able to do once it is in our  
25 possession.



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1 Q So is it fair to say that if, upon receipt of a sweat  
2 patch, unless you see something that evidences external damage  
3 or some environmental damage to the sweat patch, it -- it is  
4 ready, unless (indiscernible - garbled speech) it is ready for  
5 analysis?

6 A That is correct. And once it is in our possession, it is  
7 through the (indiscernible - garbled speech) process where it  
8 is put into an individual tube. That tube is then capped and  
9 every uncapping of that sample is tracked through the process  
10 to minimize any potential external contamination from within  
11 the laboratory, which is highly unlikely.

12 Q And are you familiar with the analyses that your  
13 laboratory conducts on each sweat patch, the process?

14 A Yes, both the screening processes, as well as the  
15 confirmation or the LC process of confirming the results.

16 Q On that latter, what is the confirmation process?

17 A So the confirmation process uses liquid chromatography  
18 mass spec mass spec, referred to as LC MS MS. This is the gold  
19 standard for drug testing. The technology essentially is able  
20 to identify specific drugs, as well as eliminate the potential  
21 of interferences or interfering compounds that could  
22 potentially look like the drug that is trying to be identified  
23 in the assay.

24 Q In regards to, for instance, methamphetamine, what does --  
25 what is -- what are the steps of your analysis of each sample

KABULSKI - DIRECT

1 you receive?

2 A So for methamphetamine, once the sample arrives at CRL,  
3 it's placed in the tube. From there, it's accessioned. All of  
4 the information that arrives on the chain of custody, or the  
5 CCF, is documented. We then apply an internal LAN, or lab  
6 accessioning number to that sample. From there, it's  
7 transferred to our initial testing and screening process.

8 In there, it is -- a buffer is applied to the tube.  
9 The application of that buffer is to extract or remove any  
10 potential drugs from that patch.

11 After the extraction process, that -- what we refer  
12 to as a -- an aliquot, is moved to the ELISA testing area, and  
13 the ELISA testing area, what we're looking for is the different  
14 classes of drugs. So it would run through a specific assay  
15 looking for methamphetamine or amphetamine. In the event that  
16 it would screen positive for an amphetamine or methamphetamine,  
17 it's then transferred to a different department, the LC or the  
18 confirmation department. From there, that sample is processed  
19 through the mass specs to determine if that is a true positive.

20 In the event that we did not find methamphetamine or  
21 amphetamine, it would be reported as a negative.

22 Q And just to be clear, when you are analyzing the sweat  
23 patch, you're not analyzing for the presence of  
24 methamphetamine, itself; is that correct?

25 A The sweat patch?

KABULSKI - DIRECT

1 Q Yes. Are you analyzing it to determine if there's  
2 methamphetamine on the sweat patch or the metabolite for  
3 methamphetamine?

4 A We're looking for both. So in order to report a positive  
5 methamphetamine, we will find methamphetamine. There also  
6 needs to be the presence of amphetamine. Amphetamine is the  
7 metabolite of methamphetamine. So our body naturally breaks  
8 methamphetamine down into amphetamine. The reason that we  
9 report a positive methamphetamine in the presence of  
10 amphetamine is it shows that the human body converted this  
11 methamphetamine to amphetamine in the absence of, say, a  
12 prescription of Adderall. Adderall could potentially show  
13 positive for -- Adderall will show a positive for amphetamine.

14 Q But not for methamphetamine; is that correct?

15 A But not for methamphetamine; you are correct.

16 Q So in order for you to make a conclusive determination on  
17 whether or not the sweat patch has tested positive for  
18 methamphetamine, you also look for the presence of amphetamine;  
19 correct?

20 A That is correct. And in the LC technology, we are able to  
21 differentiate and separate those two different drugs, so that  
22 way, they are run on the machine or the instrument at the same  
23 time, but they're not interfering compounds. We do see them as  
24 separate peaks or separate chromatograms.

25 Q So is it possible to have a sweat patch show positive for

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1 methamphetamine without the presence of amphetamine?

2 A It is possible, but it would be reported as a negative,  
3 because our criteria requires the presence of amphetamine to  
4 report a positive methamphetamine.

5 Q And just briefly, if you would, please, explain how the  
6 sweat patch works.

7 A The -- in general, description of how the sweat patch  
8 works, if the human body consumes, in this example,  
9 methamphetamine, methamphetamine is ingested by different  
10 routes. Once it is in the bloodstream, from the blood it then  
11 can get transferred into the skin or into the sweat. The sweat  
12 patch, then, will absorb the sweat. Once it is locked or  
13 sealed in the sweat patch, we are able to then extract it later  
14 in the process. So it is just an absorption of sweat into  
15 the -- the patch material.

16 Q And in that regard, it's -- it's essentially a one-way  
17 transfer? It's -- for instance, if someone consumed  
18 methamphetamines, thereafter sweat -- sweated, and the patch  
19 absorbed it, what was absorbed into the patch is not thereafter  
20 reabsorbed into the body; is that correct?

21 A That is correct. There's also a protective layer that's  
22 piece -- I'm sorry. There's also a protective layer that's  
23 placed over the sweat patch. This is to prevent any external  
24 contaminants from getting into the patch also. Therefore, the  
25 presence of drugs in the patch would be from the sweat that was

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1 collected under the patch.

2 Q In regards to heroin, is there anything, for instance,  
3 similar to the process for the detection of methamphetamine?  
4 By that I mean, what do you analyze or how do you analyze and  
5 come to the conclusion that heroin was present?

6 A So heroin is actually Diacetylmorphine. What we are  
7 looking for is 6-Monoacetylmorphine, so same as the  
8 methamphetamine. Methamphetamine looks for the presence of  
9 amphetamine and methamphetamine.

10 In these cases, we are only looking for 6-AM, or  
11 6-Acetylmorphine. That is the metabolite of heroin, and would  
12 only be present in the fact of the body converting heroin or  
13 Diacetylmorphine to 6-Monoacetylmorphine.

14 Q And, sorry, I'm out of order in this regard, but when you  
15 receive a sweat patch that, upon inspection, looks to have been  
16 corrupted so that you cannot do an analysis, do you report that  
17 back to the sender, the United States Probation Office, that it  
18 arrived in a condition that you could not test or would not  
19 test?

20 A Yes, they would receive that as a rejected for testing.

21 Q So unless there's a specific rejection for testing, we may  
22 safely conclude that it was not tampered with, so to speak, and  
23 that it was subjected to testing?

24 A That is correct.

25 Q And I apologize for asking at this late phase, did my

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1 office forward you the six laboratory reports in --

2 A Yes, I do have those reports.

3 MR. COLLINS: And would you -- and if I may, Your  
4 Honor, I assume that the Court received the ones we filed?

5 THE COURT: Yes.

6 BY MR. COLLINS:

7 Q If you would, Doctor, please take a look at Exhibits 1  
8 through 6 and familiarize yourself, and when you are  
9 comfortable, please just indicate, and then I will ask you some  
10 questions.

11 A I've already reviewed the documents and I'm free to  
12 discuss them now if you're ready.

13 Q Yes, please. So with regard to Exhibit 1, which it was a  
14 laboratory report from July 22nd, do you have that in front of  
15 you, Exhibit 1?

16 A Correct. If you don't mind, can I give you an  
17 identification number to show that we're on the same document?

18 Q Sure.

19 A It would start with the letter P. It is P0619274.

20 Q And that document that you've just described, is that  
21 consistent with the document, or the chain of custody documents  
22 and laboratory analysis that your laboratory prepares and  
23 reports back to the United States Probation Office?

24 A That is correct. I have here the chain of custody and I  
25 also have our report from CRL.

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1 Q Is there anything on the report that causes you to  
2 question the conclusions that are set forth in there?

3 A The conclusions of the report of the findings at CRL, no.  
4 I'm confident in the results.

5 Q And that applies to the same for the exhibits -- well,  
6 you -- if you wish to identify them to make consistent, please  
7 go ahead, but that would be Exhibits 2 through 6, with dates of  
8 July 29th, August 6th, August 31st, September 8th, and  
9 September 18?

10 A That is correct. I have reviewed those documents, and  
11 they meet the criteria for CRL's reporting.

12 Q And in those reports where it reflects the positive for  
13 methamphetamine, is the presence of amphetamine noted?

14 A Yes. Yes. There is methamphetamine and it's reported as  
15 amphetamine present. In one of the examples, there is a  
16 quantitative value for amphetamine. What that means is for the  
17 cut-off for amphetamine it's 10 nanograms. The presence of  
18 amphetamine is between 9.9 and 2 nanograms. To report a  
19 methamphetamine as positive, we require the presence of  
20 amphetamine down to 2 nanograms.

21 For an amphetamine-only positive, we would need to  
22 have it a minimum of 10 nanograms.

23 Q And to which report are you referring, making that  
24 specific notation?

25 A Nine eighteen, the last one that ends in 8123.

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1 Q And just to be clear, the laboratory reports that you're  
2 referring to relate to an individual by the name of Boonchan  
3 Yang; correct?

4 A That is correct.

5 Q In regards to any -- the presence of any other controlled  
6 substance, do you have any concerns about the accuracy of the  
7 reports?

8 A No, I do not.

9 MR. COLLINS: At this time, I have no other questions  
10 of this witness, Your Honor.

11 THE COURT: Cross examination?

12 MS. STAFF: Thank you, Your Honor.

13 Good afternoon, Dr. Kabulski.

14 CROSS EXAMINATION

15 BY MS. STAFF:

16 Q I'd like to turn back to your discussion about inspecting  
17 for possible tampering of patches when you -- when you receive  
18 them in your lab.

19 A That's correct, yes.

20 Q So you testified that if any adhesive is still attached to  
21 the patch, that that could -- that that could indicate  
22 tampering?

23 A Not that it indicates tampering. It just means that it  
24 wasn't a collection that we would continue testing. It's part  
25 of our standing operating procedure that if the tape still



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1 arrives on the patch, that we reject that sample for testing.

2 Q Okay. And why is that?

3 A It's -- it's been established by our directors and  
4 responsible persons. It's also part of the criteria that comes  
5 from PharmChem.

6 Q Okay. And -- but why is it determined to be, you know,  
7 potentially unreliable if it has the tape still on the patch?

8 A I'm unable to answer that question.

9 Q And at the time that you received the patch, you can only  
10 determine if the -- if the patch appears to have been tampered  
11 with or exposed, essentially in transport; correct?

12 A Correct.

13 Q So you have no way of determining whether the patch could  
14 have been contaminated or tampered with prior to its arrival at  
15 your lab?

16 A That's correct.

17 Q The -- the documents that are sent to your lab with the  
18 patches for testing, do -- does that form include a question  
19 of -- about tampering?

20 A Yes, it does. On the form, it's actually listed as  
21 Number 16, "did the PharmChek appear to be tampered with or  
22 compromised".

23 Q And again, why is that -- that question important or  
24 significant to -- to the lab?

25 A It is not significant to the lab. In the event that that

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1 is marked yes or no, we still proceed with testing, as long as  
2 there is not tape still on the sample.

3 Q So -- so the lab will still test something that could have  
4 potentially been tampered with or compromised?

5 A I can't speak to if it has been tampered or compromised  
6 with. I can only speak to that the collector documented on  
7 here their observation of the state of the patch when it was  
8 removed.

9 Q And likewise, you will still test a patch if there is no  
10 answer as to whether the patch appeared to be tampered or  
11 compromised?

12 A That is correct.

13 Q And you'd mentioned, as well, that there were test -- that  
14 there was a chain of custody documentation that is sent with  
15 the patch; is that right?

16 A That is correct.

17 Q All right. And if we could just take an example look at  
18 Government's Exhibit Number 1, can you show us where on  
19 Government's Exhibit 1 the chain of custody documentation  
20 appears?

21 A This entire document would be a chain of custody.

22 Q Okay. And so does this form indicate who -- who applied  
23 the patch?

24 A Yes, it does. It has the -- it has the -- in Section 4 --  
25 I apologize.

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1 In Section 3, it has the observer name.

2 Q Okay. And that's the -- the -- is that the person that is  
3 applying the patch?

4 A That is the -- that is what I refer to as the collector.  
5 Here it has Benjamin Schmidt.

6 Q All right. And what about the -- the person that removed  
7 the patch, where is that indicated?

8 A That is documented in Step 11 in the top right of the  
9 document. That has date removed, the observer's initials, and  
10 the donor's initials.

11 Q And where does it indicate who has packaged the -- the  
12 sweat patch?

13 A There is a -- there is a -- yes, in -- towards the bottom,  
14 it has the person shipping, the air bill number, and the date  
15 shipped. That's where that would be documented.

16 Q I'm sorry. Where are you referring?

17 A Can you see my form? I apologize.

18 Q I can --

19 A It would be here.

20 Q -- it up a little bit higher? I don't see the -- okay.  
21 Are we looking at -- so are you looking at Government's  
22 Exhibit 1?

23 A I -- I believe that I am. I don't have anything listed as  
24 Government's Exhibit Number 1. I apologize.

25 Q Let's, if I can -- I'll refer back to the sample ID, or

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1 that you'd referred to before. I'm looking at a -- a sample ID  
2 of P0619274, and that is on the -- on the lab report. That's  
3 the first page of this three-page document that's -- is  
4 Government's Exhibit 1.

5 A And is -- is this a document that says Clinical Reference  
6 Laboratory at the top?

7 Q Correct. Yes.

8 A Yes, this is a report that only comes from Clinical  
9 Reference Laboratory. This is the results page.

10 Q Oh, right. And so turning to Page -- is that -- is that a  
11 three-page document?

12 A It is a one-page document from CRL.

13 Q Okay. Do you have in front of you the -- the --  
14 essentially, the grouping of pages that constitute each of the  
15 Government's exhibits?

16 A I believe that I do.

17 Q If I could -- why don't we do it this way, perhaps, at  
18 the -- we were discussing the chain of custody form. I am  
19 currently looking at a chain of custody form where in Box 11,  
20 it says "date removed 7/29/20". Do you have that form?

21 A Yes, I have that document. Yes, I do.

22 Q All right. And -- and there, where does it indicate who  
23 packaged the -- the sweat patch?

24 A On this document, I don't see where it -- it documents  
25 that.

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1 THE COURT: This is Judge Smith. Could it be Box 21,  
2 with the observer's certification at PharmChek removal?

3 THE WITNESS: That would be who removed it. That is  
4 also the observer's signature. So -- but it does not  
5 specifically state in there anything related to the shipping or  
6 packaging.

7 THE COURT: Oh, okay.

8 THE WITNESS: But right below that, there is a  
9 section that says "person shipping, air bill number, and date  
10 shipped, attention CRL tox setup." It's my assumption that  
11 where the person shipping that would have completed that part  
12 of the document.

13 BY MS. STAFF:

14 Q So I'm sorry, where does it say "person shipping, air  
15 bill, and date shipped" on this form, the one that indicates  
16 that it -- the patch was removed 7/29/20?

17 A Number 21, it has -- or -- yes, the Number 21 has the  
18 observer's signature. Below that, there is another set of  
19 boxes that says "person shipping".

20 Q Okay. All -- the form that I have in front of me does not  
21 have that.

22 THE COURT: Nor does mine.

23 MS. STAFF: Yeah, it does not have that information.

24 BY MS. STAFF:

25 Q So -- so you're saying that the form should include a -- a

KABULSKI - CROSS

1 box that indicates the person shipping the patch, the air bill  
2 number, and the date shipped?

3 A That is correct.

4 THE COURT: Doctor, could you hold up your form so we  
5 could see if it's the same as the form we're all looking at.

6 THE WITNESS: Does that help? I'm sorry.

7 THE COURT: It does help, but it does also show that  
8 we have different forms.

9 THE WITNESS: Does -- on the right of your form, mine  
10 says "Ply, send this copy to the lab with PharmChek specimen".  
11 Does your document have different? Because we might be looking  
12 at a collector copy versus a donor copy.

13 THE COURT: I think we may be, because the one I have  
14 has a diagram of a specimen bag at 22. 23 is empty. 24 has a  
15 little bar code. 25 is empty. 27 is similar to yours with  
16 instructions to observer at the bottom.

17 THE WITNESS: We do have different documents.

18 THE COURT: Okay.

19 THE WITNESS: This -- the document that I'm referring  
20 to is what's received with the specimen.

21 THE COURT: Okay. So I think what we probably have  
22 is what's kept, perhaps, at the Probation Office.

23 THE WITNESS: Would you mind if I check my email  
24 quickly to see if what was sent to me looks like the documents  
25 you're looking at?

KABULSKI - CROSS

1 THE COURT: That would be great, thank you, if you  
2 would do that. But I do think what we may have in Exhibit 1 is  
3 what probation received -- kept, rather.

4 UNIDENTIFIED MALE SPEAKER: Yeah, Your Honor, if I  
5 may speak. I think I am understanding. So Probation keeps the  
6 Ply 1 copy and the Ply 2 is sent to the laboratory, which I  
7 believe is what the Doctor is referring to, is the second Ply  
8 that we do not retain, that their office has, and it's a little  
9 bit different than ours.

10 THE COURT: Okay. So Doctor, after you get finished  
11 looking at your email, I'll ask you if you had -- what you held  
12 up, if it was labeled Ply 2.

13 THE WITNESS: That is correct; mine is labeled Ply 2.

14 THE COURT: Okay. And -- well, Ms. Staft, you may  
15 want to ask what his Ply 2 of the date removed 7/29/20, sweat  
16 patch removed 7/29/20 shows, as far as your question of who --

17 MS. STAFT: Thank you.

18 THE COURT: -- packaged it.

19 MS. STAFT: Yes, Your Honor. Your Honor -- or excuse  
20 me.

21 BY MS. STAFT:

22 Q Dr. Kabulski, so on the chain of custody form indicating a  
23 removal date of 7/29/20, on your Ply 2 sheet that you have in  
24 front of you, who does it indicate as the person shipping?

25 A There is a blank box. There is no one indicated on this

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1 document.

2 Q So it is unknown who shipped that?

3 A That is correct.

4 Q All right. And what does it say for the air bill number?

5 A That is also blank.

6 Q And date shipped?

7 A That is blank, as well.

8 Q So the -- the -- essentially, the chain of custody

9 documentation here is incomplete?

10 A Yes. This document is incomplete.

11 MR. COLLINS: If I may interject, that's as to the  
12 document he is referring, not the one that was admitted, Your  
13 Honor.

14 THE COURT: Well, the one that was admitted has less  
15 information than he just --

16 MR. COLLINS: I understand, but he -- the one that  
17 was admitted is a different form, it appears, Ply 1 versus  
18 Ply 2.

19 THE COURT: Well, let me ask this. Is Ply -- do  
20 these come together, Mr. Schmidt? Are they like carbon copies?

21 OFFICER SCHMIDT: Yes, Your Honor. There -- I  
22 believe there's three copies, and then we retain, I believe,  
23 two of them, the first and the third Ply and then we send off  
24 the second Ply.

25 THE COURT: And does the third Ply have any more



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1 information about who packaged this?

2 OFFICER SCHMIDT: I cannot recall off the top of my  
3 head specifically what's on the -- the third Ply.

4 THE COURT: Hmm, okay. So right now, we have no  
5 chain of custody for Government's Exhibit 1.

6 Go ahead, Ms. Staft.

7 MS. STAFT: Thank you, Your Honor.

8 BY MS. STAFT:

9 Q And Doctor, if we could turn to next Government's  
10 Exhibit 2. This starts with a sample ID of P0614191?

11 A Yes, I have that document. Mine is also still Ply 2.

12 Q Okay; all right, yes. Turning to the third page, the  
13 chain of custody documentation, I'm looking at a -- a chain of  
14 custody form that indicates a removal date of 8/6/2020. Is  
15 that the same form that you're referring to?

16 A Yes, that is the same form.

17 Q All right. And turning to the -- the shipping  
18 information, what does it indicate for the person shipping this  
19 specimen?

20 A This one is blank.

21 Q And air bill number?

22 A It is blank also.

23 Q And date shipped?

24 A It is also blank.

25 Q And is that consistent with the -- the Ply 2 that you have

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1 regarding -- you know, that your lab kept as its own records  
2 regarding the sample?

3 A Yes, yes.

4 Q So your lab accepted this sample, as well, for testing  
5 with incomplete chain of custody documentation?

6 A That is correct.

7 Q Turning next to Government's Exhibit 3, looking at a  
8 sample ID of P0620012, turning to the chain of custody  
9 documentation, looking at a removal date of 8/14/20, do you  
10 have that in front of you?

11 A Yes, I do.

12 Q All right. So our -- what we received here is a Ply 1,  
13 which does not contain the -- the shipping information box  
14 that -- that we have in the previous exhibit. But do you have  
15 the Ply 2?

16 A Yes, I do.

17 Q Okay. And is the person shipping that specimen  
18 identified?

19 A That's also blank.

20 Q Waybill -- or excuse me, air bill --

21 A Blank.

22 Q -- number?

23 A It's blank.

24 Q And date shipped?

25 A That is also blank.

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1 Q Turning next to Government's Exhibit 4, looking at a  
2 sample ID of P0630070, and on the chain of custody form, a  
3 removal date of 9/8/20, again --

4 A Yes, I have that document.

5 Q Again, the documentation that we have in front of us here  
6 in court is from -- is Ply 1, which does not have the shipping  
7 information. Do you have Ply 2?

8 A I do have Ply 2.

9 Q And is the person shipping the specimen identified there?

10 A No, that is blank.

11 Q And air bill number?

12 A It is blank.

13 Q And date shipped?

14 A It is blank also.

15 Q Turning next to Government's Exhibit 5, looking at a  
16 sample ID of P635309, turning to the last page -- well, we've  
17 been referring to -- do you have the -- the chain of custody  
18 form for that sample number that I just identified in front of  
19 you?

20 A Yes, I have -- yes, the collection chain of custody form,  
21 I do have that.

22 Q Okay. And so we've actually -- we've been referring, as  
23 well, to these as -- by the date removed. Does this chain of  
24 custody form indicate a date removed?

25 A Nope. This date removed is blank.

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1 Q Okay. And again, our exhibit is Ply 1. It does not have  
2 the shipping information. Do you have Ply 2 there in front of  
3 you?

4 A Yes, I do.

5 Q All right. And what does it indicate for the person  
6 shipping the sample?

7 A It is blank.

8 Q And the air bill number?

9 A It is blank.

10 Q And date shipped?

11 A It is also blank.

12 Q And the last --

13 A I -- go ahead. I'm sorry. I apologize.

14 Q Turning to Government's Exhibit 6 --

15 A Yes.

16 Q -- a sample ID of P0638123?

17 A Yes.

18 Q And on the chain of custody form, removal date of 9/29/20?

19 A Yes.

20 Q We just have Ply 1. Do you have Ply 1 in front of you?

21 A I have Ply 2 in front of me.

22 Q Thank you, okay. And what does it indicate for the person  
23 shipping?

24 A It is blank.

25 Q Air bill number?

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1 A The air bill number is blank, and will be blank on all  
2 documents. These are shipped by U.S. mail.

3 Q And what does -- well, I'll come back around to that.  
4 Does it have -- does it indicate a date shipped?

5 A Okay. No, it does not indicate a date shipped either.

6 Q Okay. So is there -- should there be a -- an indication  
7 on the form of -- if it was shipped by U.S. mail, would there  
8 be a tracking number indicated on this form?

9 A The only documentation that CRL uses with this form is  
10 below that where it says "lab" and that is where we have our  
11 specimen received, date received, seals intact, and that the  
12 labels match. So in accordance with this document, it -- it  
13 does not have anything that indicates that it is shipped by the  
14 U.S. Postal Service.

15 Q All right. And there's no tracking information or any  
16 sort of package number associated or indicated on this form?

17 A That is correct.

18 Q Okay. And in any event, it's not identified who -- who  
19 has shipped the -- the package; correct?

20 A That is correct.

21 Q Okay. And that is true of each of the Ply 2 chain of  
22 custody forms that we have reviewed today; correct?

23 A That is correct.

24 MS. STAFF: If I could have just a moment, Your  
25 Honor.

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1 (Pause)

2 BY MS. STAFF:

3 Q And -- one moment, I have to locate the specific sheet.

4 If we could turn back to Government's Exhibit 4,  
5 looking at a -- the chain of custody documentation with the  
6 removal date of 9/8/20, this -- this form indicates on  
7 Government's Exhibit 4 that the -- that the patch did appear to  
8 be tampered with or compromised; is that correct?

9 A The collector noted here that the patch was broken up and  
10 the adhesive seemed to be peeled, and they marked "yes".

11 Q And that's of no significance to your lab?

12 A We still test the patch, regardless of what is documented  
13 there.

14 Q Okay. Do you do any additional inspection of the patch if  
15 it is -- if something like this is indicated?

16 A We do not.

17 MS. STAFF: Your Honor, I don't think I have any  
18 other questions at this time.

19 THE COURT: All right. Thank you.

20 Redirect?

21 MR. COLLINS: Your Honor, if I may approach, I have a  
22 blank, so to speak, form that -- the PharmChek form that the  
23 United States Probation Office uses, and as an example, I've  
24 provided Ms. Staff with a similar -- it's a three-part  
25 document, that we are learning.

KABULSKI - REDIRECT

1 THE COURT: You may approach. Thank you.

2 REDIRECT EXAMINATION

3 BY MR. COLLINS:

4 Q Dr. Kabulski, I hate to ask if you have any of these in  
5 your -- or if you have any of these forms, but the blank -- I  
6 don't think you can see it, the --

7 A I can see it, and I do not have any of those documents.

8 Q Are you familiar with the documents, though?

9 A I am only familiar with Ply 2.

10 Q Ply 2. Is it fair to say that Ply 2 indicates that  
11 there's at least two documents, Ply 1 and Ply 2?

12 A That is correct.

13 Q And would it surprise you that there's also a third copy  
14 called -- or referenced Ply 3?

15 A Yes.

16 Q It would surprise you that there's a third page?

17 A Well, I -- I was unaware that this was a Ply 2 copy. In  
18 the federal documents, which this is not a federal document,  
19 this is not a SAMHSA approved federal form. Sweat is not a  
20 regulated or a federal (indiscernible - garbled speech) that  
21 can be tested. Those documents contain a five-part form. That  
22 five-part form is a lab copy, an MRO copy, a donor copy, an  
23 employer copy, and then a collector copy. So based off of what  
24 I use for a federal urine test, this having multiple parts does  
25 not surprise me.

KABULSKI - REDIRECT

1 Q And is it fair to say that you are not personally familiar  
2 with the PharmChek three-part form that the United States  
3 Probation Office for the District of Alaska uses; is that  
4 correct?

5 A That is correct.

6 Q Nonetheless, in regards to the chain of custody, if, as  
7 you observed, there was a Ply 2 copy in your file, to which you  
8 were referring -- am I correct you were referring to the Ply 2  
9 copy?

10 A That is -- that is correct.

11 Q Not the -- the actual exhibit that we sent, but the Ply 2  
12 copy?

13 A No, I was referring to the lab copy.

14 Q And that's the copy on the submission form, chain of  
15 custody form, that your laboratory retains for its own records;  
16 correct?

17 A That is correct.

18 Q Nonetheless, on the forms with which you're familiar, and  
19 looking at the Ply 2 copies that you have in front of you, what  
20 is -- is there a way to track the connection between these  
21 various documents and the particular specimen that has been  
22 sent?

23 A Yes. Documented on my Ply 2, which is the -- the lab  
24 section, there is a "seal intact" box, which we are required to  
25 check when we receive the sample. That is to make sure that



KABULSKI - REDIRECT

1 the specimen was sealed and appropriately packaged. There's  
2 also a labels match. What we are looking for with the labels  
3 match, we are making sure that the specimen number that is on  
4 this chain of custody matches the specimen number that is on  
5 the patch provided.

6 Q And in regards to the laboratory report, the separate  
7 document that you prepare, is there a method of connecting your  
8 report with these chain of custody documents?

9 A Yes. That can be -- can be connected to it through in the  
10 middle where it says "slip ID", and you would have the -- what  
11 is on the chain of custody or the collection chain of custody,  
12 the specimen ID, and then there's also the sample ID in the top  
13 right. That is the number that we affix to the -- the tube or  
14 the bottle that the sweat patch is transferred to, and also  
15 attached to the front of the collector chain of custody.

16 Q And so in regards to your Ply 2 documents that you have  
17 there, to which you've been referring, each of those has a bar  
18 code with a specimen number; correct?

19 A Yes, there's a specimen number that is preprinted that  
20 comes on the package, and there are two bar codes that are  
21 applied at the time of the accessioning or the receipt of the  
22 sample.

23 Q And if -- answer this only if you know. On these chain of  
24 custody forms, are there stickers, labels, security labels  
25 affixed that then are applied to the sample and its packaging

1 during the process?

2 A I'm unable to answer that question.

3 Q So in regards to the Ply 2 copy where it does -- it has  
4 boxes indicating person shipping, air bill number, date  
5 shipped, that is not necessarily going to be filled out on your  
6 Ply 2 copy, correct, by your staff?

7 A That is not filled out by my staff.

8 Q And that is filled out by the sender?

9 A I would assume that is filled out by the sender.

10 MR. COLLINS: I have no other questions of this  
11 witness, Your Honor, at this time.

12 THE COURT: I have a question. If I'm understanding  
13 you correctly, Doctor -- this is Judge Smith -- those little --  
14 in looking at this that's been provided, and I don't know if  
15 you can see it -- probably not -- but there are these little  
16 bar codes, three of them. It looks like --

17 THE WITNESS: Yes, I can see those.

18 THE COURT: -- it goes over the top of the specimen  
19 bag, the security seal, and then one goes on, I guess, the  
20 sample, and one stays --

21 THE WITNESS: Yes.

22 THE COURT: -- on this document. Okay. So when I  
23 look at Exhibit 1, and I look at your test results, I see that  
24 slip ID that matches the security seal on Ply 1 for the patch  
25 removed 7/29/20, and they match. When I look at Government's

1 Exhibit 2, Government Exhibit 2 has a Ply 2, and so it looks  
2 like that security seal that's just sort of plunked down in two  
3 different cases was P0614191, which does not match the slip ID  
4 on the front of the test. Can you --

5 THE WITNESS: Your Honor --

6 THE COURT: Yeah, what can you tell me about that?

7 THE WITNESS: Yes, I apologize. The number that  
8 starts -- or the bar code that starts with the "P", that isn't  
9 applied to the paperwork until it is received at CRL. That's  
10 an internal LAN number. That's a lab accessioning number. So  
11 we have two levels of identification. We have the specimen  
12 number on this, which starts with a "7" that is part of the  
13 original documentation. When it is received, we then apply our  
14 own tracking bar codes, and in this case, those are labeled  
15 with a "P" for "patch".

16 THE COURT: Okay. Thank you. So -- and then I see  
17 on the -- right underneath that "P, patch" Ply 2 for  
18 Government's Exhibit 2, there is a slip ID number, 7614227,  
19 looks like perhaps 68, which does match the slip ID on the  
20 report for Government's Exhibit 2.

21 THE WITNESS: Yes.

22 THE COURT: So it's when the slip ID is matched that  
23 you -- your business feels comfortable that the chain of  
24 custody has been respected; is that -- am I understanding you  
25 correctly?

1           THE WITNESS: That is -- that is correct. If the  
2 paperwork listed on here as the specimen number, if that  
3 number, starting with the 7, contains the same seal on the  
4 patch that arrives, that would start with that same "7", that  
5 is acceptable for us to test.

6           THE COURT: All right. I'm looking through them all  
7 to see --

8           THE WITNESS: Also --

9           THE COURT: Go ahead.

10          THE WITNESS: Your Honor, also, where it says -- on  
11 mine it has "seal intact" which is documented. That means that  
12 that same number was correctly applied to the shipping  
13 container, that it was sealed during the collection process.  
14 And I believe that that is documented in Step 20, where the  
15 donor signs and initials.

16          THE COURT: Step 20?

17          MR. COLLINS: It's on the front page.

18          THE COURT: Okay. So that's where the donor says, "I  
19 certify the specimen container was sealed with a tamper-proof  
20 seal in my presence, and that the information on this form and  
21 on the label is correct"?

22          THE WITNESS: That is correct.

23          THE COURT: Okay; all right. Thank you. Let me  
24 double-check these other slip IDs.

25          Okay. And regarding that one Government's Exhibit 4,

1 where the -- the person who removed the patch checked the box  
2 that it had been tampered with and appeared that the patch was  
3 broken up and adhesive seemed to be peeled, are those  
4 conditions, a patch being broken up and adhesive being peeled,  
5 those -- would those affect the accuracy of the test result?

6 THE WITNESS: It would not affect the accuracy. When  
7 the patch is removed, because of the adhesive that goes on  
8 there and the removal process, and based on the hygiene of the  
9 donor, they can come in a state of -- in disarray, or pieces.

10 THE COURT: Okay. Moving back to Government's  
11 Exhibit 1, I see a positive for methamphetamine, comma, sweat,  
12 and positive for opiates, comma, sweat. And then I see the  
13 amphetamine cut-off value that -- between 2.0 to 9.9  
14 NG/milliliter was present. Is there any place on this form  
15 that tells me that there were opiates, metabolites for opiates  
16 present?

17 THE WITNESS: Your Honor, is that sample ID that ends  
18 in 0070?

19 THE COURT: Let's see, the sample ID --

20 THE WITNESS: Oh, I'm -- that is not correct. I'm  
21 sorry.

22 THE COURT: Yeah, I'm looking at the one with the  
23 slip ID, X761422782, Government's Exhibit 1.

24 THE WITNESS: Yes. I have that right in front of me.  
25 I apologize.

1 THE COURT: No, that's fine.

2 THE WITNESS: So under initial test, we have -- that  
3 is the screening, it says opiates and sweat. And then in the  
4 confirmation, it has MS, morphine sweat. Morphine is part of  
5 the opiate family. The opiate family contains morphine,  
6 codeine, 6-AM, Hydrocodone, hydromorphone, oxycodone, and  
7 oxymorphone.

8 Q So is the morphine a metabolite of opiates?

9 A Morphine is an opiate.

10 Q Okay. But my question is -- I understand -- if I  
11 understand -- well, first let me make sure I understand this.

12 Under "confirmation", when you have this information  
13 about the amphetamine cut-off value, is that where you find  
14 whether there was an amphetamine metabolite present?

15 A I apologize, Your Honor. Amphetamine is listed here, and  
16 methamphetamine. They are run as separate screens. So while  
17 the methamphetamine screen is looking for specifically  
18 methamphetamine, specifically d-methamphetamine, which is the  
19 street or the illegal version of methamphetamine, the  
20 amphetamine is more designed as a screen for just the  
21 amphetamine drug.

22 So as we move into the confirmation, there is an  
23 amphetamine result which relates to the amphetamine -- it  
24 actually relates to the methamphetamine screen, because the  
25 methamphetamine is what triggers the presence of that

1 amphetamine.

2 For the opiates, morphine is part of the opiate  
3 class, which is why it says, "opiates, sweat positive", and  
4 then down further, it says "morphine". But on this document,  
5 it does not list it as a class, and then below that, the  
6 specific drugs that are in that class, which I see now is  
7 confusing.

8 If it were to be presented that way, it would say,  
9 "opiates positive", and below that, it would say "MS morphine  
10 sweat 40 positive", and that would show that the opiate that we  
11 found in the confirmation testing was morphine.

12 THE COURT: Okay. But my understanding from perhaps  
13 some other cases was that if a defendant, for example, came in  
14 and said, "I was around people who were using meth but I didn't  
15 use meth. If I got something on my patch, it was that meth,  
16 because somebody with meth on their hands touched me or  
17 something, but I did not put any meth in my mouth."

18 And what I understood the answer to that to be was if  
19 there are the metabolites of methamphetamine present, you know  
20 that person has, in fact, ingested methamphetamine and their  
21 body has processed it. Would you agree with that?

22 THE WITNESS: You are correct. I do agree. You are  
23 correct.

24 THE COURT: All right. Now previously, I had the  
25 understanding that this indication of methamphetamine in the

1 confirmation test was a confirmation of a metabolite of  
2 methamphetamine; is that correct?

3 THE WITNESS: That is correct, yes.

4 THE COURT: All right. So then that's my question.  
5 Is the morphine a metabolite of opiates and indication that  
6 someone just didn't get somehow opiates on their patch when  
7 they didn't, in fact, ingest any?

8 THE WITNESS: The -- the metabolite of morphine is  
9 actually more -- is Morphine-3-glucuronide. That is a process  
10 that the body does. It adds a glucuronide or adds a chemical  
11 that makes it more polar so that way it can be absorbed into  
12 the urine.

13 For a sweat, it's the parent drug that is excreted in  
14 our sweat. So the reason that we are only seeing morphine and  
15 not the metabolite of morphine is that because morphine is  
16 traveling through the blood, it is then what is absorbed into  
17 the sweat patch.

18 THE COURT: Okay. So -- but it -- does the presence  
19 of morphine indicate that a person ingested opiates?

20 THE WITNESS: No, it does not.

21 THE COURT: So somebody could, with morphine on their  
22 hands, could contaminant a patch if --

23 THE WITNESS: If the patch was not properly covered  
24 or was exposed, there would be potentially morphine.

25 THE COURT: Okay. So if I understand you correctly,



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1 with this Page 1 of the report, there isn't a place that --  
2 that establishes the presence of an opiate metabolite?

3 THE WITNESS: In this example here for morphine, you  
4 are correct. In the patch -- or in the other documents that  
5 have been provided, the 6-AM, or the 6-Acetylmorphine, those  
6 would all be the same as the methamphetamine/amphetamine value.  
7 The presence of 6-AM could only come from the ingestion of  
8 heroin.

9 THE COURT: Okay. So all the other exhibits, 2  
10 through 6, had the presence of the 6-AM, which is the  
11 metabolite of opiates; am I understanding that correctly?

12 THE WITNESS: Correct, correct.

13 THE COURT: All right. Thank you. I have no further  
14 questions.

15 THE WITNESS: Thank you.

16 THE COURT: Anything further, Ms. Staft?

17 MS. STAFT: Your Honor, if I could just ask a couple  
18 clarifying questions.

19 RECROSS EXAMINATION

20 BY MS. STAFT:

21 Q Doctor, you've indicated that the -- the -- say, on the  
22 chain of custody form, if the tampering box is not -- is  
23 checked as yes, that that doesn't affect your ability to -- to  
24 test the patch; correct?

25 A Correct.

KABULSKI - RECROSS

1 Q Meaning, it doesn't affect your ability to test the  
2 substances on the patch as you received it?

3 A Correct.

4 Q It -- but that the -- your ability to test the patch as  
5 you received it obviously does not exclude the possibility  
6 of -- of earlier contamination prior to being received at the  
7 lab; correct?

8 A For the heroin or for the methamphetamine, that is  
9 excluded, because those have the metabolite. For the morphine,  
10 you are correct.

11 Q Well, so a -- so these patches aren't -- aren't DNA  
12 tested; correct?

13 A Correct.

14 Q So -- so you're not able to tell if a -- a metabolite  
15 present in the patch came from the sweat of -- of the wearer or  
16 if it could have come from, potentially, the -- the sweat of  
17 somebody else that had touched the patch; correct?

18 A This would not be a touch transfer. The metabolite at  
19 these levels and the cut-off of 10 that is established for  
20 these drugs is based on the minimum of a single use. Trace  
21 analysis would be below our cut-off -- or trace transfer, if I  
22 just say it more correctly.

23 Q So -- but you can't -- but again, you can't -- you don't  
24 have a way of -- of testing -- of confirming through a DNA  
25 analysis, whose -- whose sweat or metabolites you are testing;

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1 correct?

2 A You are correct.

3 Q And going back to the chain of custody -- well actually,  
4 could we just turn to Government's Exhibit 1.? So I see on  
5 Page 1 here, I'm looking at a sample ID P06197 -- or 274. Just  
6 below the sample ID, it has a collected date of 7/22/20; is  
7 that right?

8 A That is correct.

9 Q Okay. And what is the date received by your -- the sample  
10 was received by your office or by your lab?

11 A That is when it is received at Clinical Reference  
12 Laboratory.

13 Q So is that the date that it's received in the mail? Is  
14 that what you mean?

15 A That is when it is received at the laboratory, yes.  
16 That's when it is opened, it is accessioned, and it is started  
17 through our testing process.

18 Q All right. And so --

19 A It's when the sample ID would be applied.

20 Q Okay. What's the receive date indicated here?

21 A 8/25/2020.

22 Q And what's the reason that -- so that's over a month after  
23 the collected date. What's the reason for that lapse in time?

24 A I cannot comment. It would only be speculation.

25 Q So could that have been a -- a lapse in time from the --

1 could that have been a lapse in processing by your -- by your  
2 lab?

3 A No. This -- when they are received at the laboratory,  
4 they are processed within one or two days. We do not process  
5 samples on Sunday. So if we were to receive something from the  
6 U.S. mail on a Sunday, it would not be processed until Monday.  
7 For every other day, it is processed same day. It would be  
8 considered received same day.

9 Q Okay. So -- so it may have been that there was a lag on  
10 the -- on the collector's end that would account for the --

11 A Yes. It would be speculation, yes.

12 Q But you have no way of knowing what happened to that  
13 sample or where it was during that time?

14 A You are correct.

15 Q And likewise, who handled it?

16 A You are correct.

17 Q And -- and again, on this one, we don't know which -- what  
18 date it was sent to your lab; correct?

19 A No. I only have a date removed.

20 MS. STAFF: No further questions, Your Honor.

21 THE COURT: I have a couple other questions,  
22 Mr. Collins, before --

23 Doctor, when I look at Ply 1 on the sample form  
24 that's been provided by the Government, Box Number 23 has  
25 the -- what are we calling it -- the slip ID number with the

1 bar code, and underneath, it says "security seal PharmChem,  
2 Inc.", then Box 24 has a repeat of the number and bar code, and  
3 it gives the instruction, "place over top of the specimen bag".  
4 And then Box 25 has a repeat again, and donor's initials and  
5 observer's initials and date collected.

6 Do I understand correctly that this bottom of it that  
7 says "security seal PharmChem, Inc.," has the number, "place  
8 over top of specimen bag," and has the donor's initials, and  
9 the observer's initials -- does that go over the top of the  
10 bag, itself?

11 THE WITNESS: There is a small, plastic, see-through  
12 container. It is a bag. The sweat patch is placed in that  
13 bag. When it is closed and sealed, that seal is then placed  
14 over the -- the overlap. So that way, it is sealed and  
15 documented that that has been placed in there and that any  
16 evidence of tampering with that would break that seal. And  
17 then we would document that as, in the lab portion where it  
18 says "seal intact", if that were broken before it arrived at  
19 CRL.

20 THE COURT: Do I understand that both the donor's  
21 initials, which would be in this case Mr. Yang, and the  
22 observer's initials, which would be Mr. Schmidt, would have to  
23 be on that seal to the bag for you all to test it?

24 THE WITNESS: That is correct.

25 THE COURT: All right. And where is it that you all

1 say on the form that that was the case?

2 THE WITNESS: For the seals intact on Ply 2.

3 THE COURT: On Ply 2. Okay. Could you look at all  
4 of your Ply 2s for each of these tests and tell me if they say  
5 the seals were intact?

6 THE WITNESS: Would you like me to read which  
7 specimen I'm looking at and then confirm, or just review all of  
8 them and let you know if any of them do not have that.

9 THE COURT: Actually, if it you could do it slip ID  
10 by slip ID, that would be great.

11 THE WITNESS: Slip ID 761422782, I have documented  
12 here that the seal is intact. 761422768, I have documented  
13 that seal is intact. 761557152, I have documented seal intact.  
14 761557140, I have documented seal intact. 761557132, I have  
15 documented seal intact. 761557098, I have documented seal  
16 intact. And that is all the documents I have.

17 THE COURT: Okay. And you read off six; is that  
18 correct -- no, wait. Did you read off 761557152?

19 THE WITNESS: Yes, I -- I will read it again, but I  
20 believe that I did. 761557152, and that is documented as  
21 seal's intact.

22 THE COURT: Okay; all right. So on -- you've just  
23 read off six Ply 2s with the seal intact on each of them?

24 THE WITNESS: That is correct, Your Honor.

25 THE COURT: Thank you. All right. I have no further

1 questions.

2 Mr. Collins?

3 MR. COLLINS: Well, I -- I just have one.

4 FURTHER DIRECT EXAMINATION

5 BY MR. COLLINS:

6 Q The subject matter -- with regard to the shipper's  
7 information that has become the topic of -- of focus on Ply 2  
8 of this form, the information with regard to the ship -- the  
9 method of shipment would come from the person -- or the  
10 Probation Office who is shipping the sample; is that correct?

11 A That is -- that is correct.

12 Q And while you've mentioned that the United States Postal  
13 Service was a shipper, you cannot confirm that, in fact, it was  
14 exclusively the postal service who ships --

15 A I cannot. I cannot. They are shipped by courier, postal  
16 service, FedEx, UPS.

17 MR. COLLINS: Thank you. I have no other questions  
18 of this witness, Your Honor.

19 THE COURT: Doctor, one quick other question. On  
20 the -- I believe it was Exhibit 1, where there was a -- a month  
21 delay in it being tested, how does that affect the validity of  
22 the readings that you would receive.

23 THE WITNESS: We have no criteria based on the amount  
24 of time for shipping to be able to distinguish or understand  
25 what that -- the validity or the potential degradation would

1 be. It would be a degradation product. In the event that it  
2 was not for this specific example, morphine, methamphetamine,  
3 or amphetamine, the breakdown of those would be into something  
4 that we would not be able to detect.

5 THE COURT: Well, does that mean that this is not a  
6 reliable test result or does that mean the science means that  
7 it would be higher if it had come to you for testing earlier?

8 THE WITNESS: It could potentially be higher.

9 THE COURT: Could it potentially be -- could it  
10 potentially read positive when a person wasn't positive?

11 THE WITNESS: No.

12 THE COURT: All right. Thank you. I have no further  
13 questions.

14 Anything further, Ms. Staft?

15 MS. STAFT: No, Your Honor.

16 THE COURT: All right. Thank you. May this witness  
17 be excused?

18 MR. COLLINS: Yes. Thank you, Doctor.

19 THE COURT: Thank you, Doctor.

20 THE WITNESS: Thank you.

21 THE COURT: You can figuratively step down. Thank  
22 you.

23 (Witness excused)

24 AUTOMATED VOICE: You have been disconnected from the  
25 meeting.



1 THE COURT: Any other witnesses from the Government?

2 MR. COLLINS: Your Honor, in regards to the form that  
3 I provided sample copies --

4 THE COURT: Yes.

5 MR. COLLINS: -- from probation Officer Schmidt,  
6 would you allow me to call him to authenticate them and have  
7 this become a part of the -- if the Court so desires?

8 THE COURT: Yes, I think that would be fine. Do you  
9 have any objection, Ms. Staft?

10 MS. STAFT: No, Your Honor.

11 THE COURT: Okay. Mr. Schmidt can be re-called.  
12 Since it's been over a month, Madam Clerk, I'll ask that you  
13 re-administer the oath -- or approximately a little more than a  
14 month -- little less than a month, I should say.

15 DEPUTY CLERK: Please raise your right hand.

16 (Oath administered to the witness)

17 DEPUTY CLERK: Please be seated. For the record,  
18 please state and spell your full name.

19 THE WITNESS: Benjamin Schmidt, B-E-N-J-A-M-I-N,  
20 S-C-H-M-I-D-T.

21 DEPUTY CLERK: Thank you.

22 MR. COLLINS: Your Honor, the -- the copies that I  
23 provided counsel, as well as Your Honor, are unique in that  
24 they have their own specimen ID number. So the sample that I'm  
25 going to hand him is not going to be identical in the specimen

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1 ID numbers. I'm just offering this as an illustrative example  
2 of the forms that are used and I would mark this as Exhibit 7.

3 THE COURT: All right.

4 MR. COLLINS: I mean, the Court has a copy, if the  
5 Court just wants to mark that as 7 and keep it, then.

6 THE COURT: Well, why don't you mark the one that  
7 you're going to actually use, and then provide that ID number.

8 BENJAMIN SCHMIDT, GOVERNMENT WITNESS, SWORN

9 DIRECT EXAMINATION

10 BY MR. COLLINS:

11 Q Officer Schmidt, you previously testified about completing  
12 chain of custody forms for each of the six samples that you  
13 submitted and previously testified about. I have handed you  
14 Exhibit Number 7, and do you recognize what that form generally  
15 is?

16 A Yes.

17 Q And what is Exhibit 7?

18 A It is a chain of custody that we complete when we apply  
19 and remove sweat patches on individuals under supervision.

20 Q And physically, what -- would you describe the nature of  
21 the form?

22 A It lists various items, such as the defendant's name who  
23 we're applying the patch to, the indication of the sweat patch  
24 number specifically assigned to that sweat patch, the dates  
25 applied, dates removed, and signatures following the protocol

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1 that's assessed on the form.

2 Q Thank you for that, but I was actually being more basic.

3 In regards to physical nature of the form, is it -- when you --

4 A Oh, I see.

5 Q -- receive an original blank form, what does it consist  
6 of?

7 A So we typically get stacks. There is two different types  
8 that we get. We get one specifically for people under a post  
9 conviction, and pretrial. The only difference is in that top  
10 Number 1 reading, it will say "federal pretrial" instead of  
11 "federal probation", and I believe that is for financial means.  
12 They -- the agencies differentiate between probation and  
13 pretrial. But aside from that, it's typically -- there's a --  
14 they're three-ply forms and then there's the kind of the edged  
15 sides that we tear off to -- to send out.

16 Q If I may, this is -- in its original form, looks like the  
17 original computer paper?

18 A Yeah, essentially. It's a paper format.

19 Q But the sides have a binding element with holes in it;  
20 correct?

21 A Correct.

22 Q But if you were to tear off the binding, the holes with  
23 the perforation, it would reveal that there are three forms,  
24 each slightly different than the other, but all related to the  
25 same specimen number; is that correct?

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1 A Correct.

2 Q On the Ply -- and I'll refer to it as Ply 1, because that  
3 seems to be the one that we were originally thinking that we  
4 were dealing with -- what, in its uncompleted form,  
5 distinguishes this Ply 1 from the other two, besides wording?

6 A There are the stickers on the front portion in 23, 24, the  
7 25, and 26 boxes, and those we apply to the bags, itself.  
8 There are two individual bags that we utilize for shipment.

9 Q So on the -- the initial form, there's an -- there are  
10 actually four stickers; correct?

11 A Correct.

12 Q And there are three stickers with bar codes, as well as a  
13 unique specimen number; correct?

14 A Correct.

15 Q And then that specimen -- unique specimen number also  
16 appears on the bottom portion of that sticker, that reads  
17 "security seal PharmChem, Inc., place over top of specimen bag,  
18 PharmChek, donor's initial, observer's initial, date  
19 collected"; is that correct?

20 A Correct.

21 Q The bottom portion of that sticker, where is that placed?

22 A So there are two clear bags that we utilize. That sticker  
23 goes on the secondary bag. So there's a smaller bag that gets  
24 placed in that larger secondary bag, and that is when we apply  
25 this security seal on that exterior bag.

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1 Q What's -- what happens to the bar code stickers that  
2 appear to be below Sections 23, 24, 25?

3 A So typically, one is applied to the initial larger bag,  
4 and the second one is applied to the -- the smaller bag.

5 Q Who completes these forms after a sweat patch has been  
6 removed -- or during the process of removing -- or placing and  
7 removing a sweat patch?

8 A The left side of the paper is -- is filled out for whoever  
9 is doing the application, and those are specific officers  
10 trained in the sweat patch procedures. The right side for the  
11 removal, it could be a different officer, but they are also  
12 trained in the -- the sweat patch procedures.

13 Q The stickers that we were recently discussing, when are  
14 those removed and applied to the plastic bags?

15 A When the sweat patch is removed.

16 Q So this is immediately before it's submitted for  
17 laboratory analysis?

18 A Correct.

19 Q Once these stickers are removed, what's left on Ply 1? Is  
20 there anything beneath the sticker that's --

21 A No. It's -- it will be blank. Essentially, if you were  
22 to look at this document without the stickers, it would be a  
23 blank patch in those in that area.

24 Q What forms do you submit along with the sample?

25 A Ply 2 is put inside the secondary bag, which then is

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1 sealed with that security seal. And that Ply 2 is sent off to  
2 the lab.

3 Q Within the sealed plastic bag?

4 A Within, yes. It's not in the bag with the patch, itself.  
5 That has -- there's nothing sealed in with that patch. It has  
6 its own individual bag, but this -- the Ply 2 is in the  
7 secondary bag.

8 Q Ply 2, if you would, rip open or so we can -- in  
9 comparison with Ply 1, am I correct that the form, the  
10 preprinted form, appears identical between Ply 1 and Ply 2 up  
11 to that section below -- well, I'll refer to it as the line  
12 with the -- above which is 10, observer signature and 21,  
13 observer signature?

14 A Yeah, so Sections 1 through 21 are identical between those  
15 two. And then below the 21 box, it is different.

16 Q And just going back, there is a Ply 3; correct?

17 A Yes.

18 Q And what's -- what happens to Ply 3 during this process of  
19 submission.

20 A The Ply 3 is a -- is just a -- it's another copy. What  
21 our staff does is we make a photocopy of the first, the  
22 first -- the first Ply, since it's essentially the third Ply is  
23 essentially a -- a specific copy of that first Ply.

24 Q So in regard to comparison of Ply 1 and Ply 3, are they  
25 virtually identical but for the fact that there is a sticker on

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1 Ply 1 and there is none on Ply 3?

2 A Correct.

3 Q And but for the sticky whatever patch on Ply 1, once the  
4 stickers are removed, it likewise is blank, as Ply 3?

5 A Correct.

6 Q But in Ply -- on Ply 2, there is or there are several  
7 boxes that request information. That is not reflected on Ply 1  
8 nor Ply 3; correct?

9 A Correct.

10 Q Who would fill out that information on Ply 2?

11 A So I believe you're indicating -- so there's a lab portion  
12 that's completed by the lab, and then I believe there's a  
13 shipping line.

14 Q And that is person shipping, air bill number, date  
15 shipped, and shipped to whom? I'm sorry, the first three  
16 boxes, person shipping, air bill number, date shipped, that  
17 would be filled out by whom?

18 A So our office, we do not fill that -- we do not fill out  
19 that portion when we send it off.

20 Q So that information is not on any of these documents;  
21 correct?

22 A Yeah, it's only specific to Ply 2.

23 Q Well, how are these items then shipped?

24 A They're shipped through FedEx.

25 Q How do you keep a record of the shipping?

SCHMIDT - DIRECT

1 A The tracking number that we send with FedEx, our front  
2 desk staff gets an email notification when it gets shipped, and  
3 then an email notification when it arrives to the CR  
4 Laboratory, which is indicated where it specifically gets  
5 shipped to.

6 Q Now, I beg the Court's forgiveness, I believe you may have  
7 answered these questions before when you first testified. Did  
8 you previously describe the FedEx shipment process?

9 A I can't recall if I specifically did or not.

10 Q With regard -- of your testimony, but do you recall that  
11 there is information about the tracking; is that correct?

12 A Yes. So I'm not -- I'm not part of the shipping process.  
13 That is our administrative staff, but I know we do utilize  
14 FedEx and the shipping number, the tracking number that are on  
15 the specific labels that we send out.

16 Q And that's from your office to -- to the laboratory, not  
17 on the way back; is that correct? You follow it there but you  
18 don't follow the laboratory, whatever reports -- well,  
19 actually, the reports aren't shipped back to you?

20 A Correct. They're on an online database.

21 Q So you receive the reports via electronic means?

22 A Yes.

23 Q And with regards to the consistency of the shipment of the  
24 sample to the laboratory, and the reports that you receive in  
25 return, what ties the two together?



SCHMIDT - DIRECT

1 A I'm not sure I understand your question.

2 Q How do you know that the sample you sent to the laboratory  
3 and the report that you ultimately receive from the  
4 laboratory -- how do you connect the two, the item you shipped  
5 with the laboratory report that you receive in return? Is  
6 there a number that you -- that's consistent?

7 A Yes. And I believe I referred to it during my last  
8 testimony. I can't recall the specifics, but there's -- on the  
9 lab report number -- on the lab report, itself, there's a  
10 co-aligning number that matches with the chain of custody form  
11 that we send off.

12 Q So there is -- there are -- there are -- on each unique  
13 form, there's a specific unique number that then becomes  
14 associated with the sample?

15 A Correct.

16 Q And you fill out the form, and then that chain of custody  
17 form allows you to connect the laboratory report with the  
18 sample that you submitted so you can tie it back to the  
19 individual whose sweat patch you removed?

20 A Correct.

21 MR. COLLINS: I don't know if I offered 7, but that  
22 would be his or I can rely upon the Court's --

23 THE COURT: Any objection to the admission of 7?

24 MS. STAFT: No, Your Honor.

25 THE COURT: It will be admitted.

SCHMIDT - CROSS

1 (Government Exhibit 7 admitted)

2 THE COURT: Cross examination?

3 MS. STAFF: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MS. STAFF:

6 Q Probation Officer Schmidt, so looking at Government's  
7 Exhibit 7 on Ply 1, there's discussion about the -- the  
8 stickers on the front. Do you see those stickers there?

9 A Yes.

10 Q All right. And there are three different stickers with  
11 bar codes and the same -- the same number on each of these  
12 three stickers; right?

13 A Yeah, unique to that chain of custody form.

14 Q Okay. What is done with each of these three stickers?

15 A So one is applied to -- because -- so again, there's two  
16 bags, one's smaller than the other. The patch, itself, goes in  
17 its own individual bag. One of these bar codes is placed on  
18 that. It's -- it needs to be somewhere on the -- they're clear  
19 plastic bags. Typically, it's placed on the top. It can be on  
20 the bottom, but as long as it's on that bag. And then the  
21 second one is typically applied on the secondary bag, the  
22 larger bag with which then the security seal is placed on it.  
23 And then the third one either stays on the chain of custody  
24 form or is discarded.

25 Q I'd like to turn your attention now to Government's

SCHMIDT - CROSS

1 Exhibit 3.

2 (Indiscernible comments away from microphone)

3 MS. STAFT: What's that?

4 MR. COLLINS: You might need a different --

5 THE WITNESS: Yes.

6 MS. STAFT: Yes, if I could -- if I could approach,

7 Your Honor.

8 THE COURT: Yes.

9 BY MS. STAFT:

10 Q So I am handing you Government's Exhibit 3, the chain of  
11 custody form of Ply 1, and PO Schmidt, do you see that there  
12 are two -- it appears that there were two stickers with bar  
13 codes and those -- that unique number still affixed to this  
14 Ply 1 form?

15 A Yes, I see two bar codes.

16 Q Okay. So that would indicate that -- that not all of the  
17 stickers were applied to the either inner or secondary bag, as  
18 required; correct?

19 A Correct.

20 Q Because if -- if two are required to be affixed to the  
21 packaging, then if -- if any more than one of the three remains  
22 on the form, then they would not have been labeled as  
23 instructed?

24 A I'm -- can you -- I'm sorry. I don't understand the  
25 question.

SCHMIDT - CROSS

1 Q That was a mouthful. So -- so you said there are three  
2 stickers that typically come with this. One is applied on the  
3 smaller bag that the patch goes into, and a second sticker is  
4 put on the secondary, larger bag that is then sealed and sent  
5 to -- sent to the lab. Am I following you correctly?

6 A Yes, yeah. That is the procedures.

7 Q Okay; all right. But we see on Government's Exhibit 3  
8 that two of the three stickers remain -- original three  
9 stickers remain on the form.

10 A That's correct.

11 Q Indicating that only one sticker was -- was utilized.

12 A Yes. From what I can recall on this -- from what I see on  
13 this sheet, I was not the officer who did the removal, so I  
14 can't attest to specifically what -- why that is.

15 Q Okay. And going to next refer to Government's Exhibit 5,  
16 that chain of custody form, if I could approach. And how many  
17 stickers remain attached to this Ply 1 chain of custody form?

18 A There are two bar codes.

19 Q Okay. Again, that indicates that there were not -- that  
20 the two stickers could not have been used in the packaging of  
21 the -- of the sample as required?

22 A Correct.

23 Q All right. And you went through training as to the  
24 correct procedures for -- for application and removal of these  
25 patches?

SCHMIDT - CROSS

1 A Yes.

2 Q And as far as -- and additionally, you went through  
3 training on how to fill out these forms?

4 A Yes.

5 Q All right. And there is a box, it's Box 16, on all the  
6 forms that is a question about tampering; correct?

7 A Yes.

8 Q All right. And in your training, it was emphasized  
9 that -- that this section must be filled out for all patches?

10 A From the training, no -- (indiscernible - garbled speech)  
11 received, yes. We are needed to indicate whether we noticed  
12 any tampering or anything compromised with the patch.

13 Q And did you, in fact, indicate on each of these forms that  
14 you collected whether there was tampering evident?

15 A The ones I completed, I believe, from what I reviewed, I  
16 did indicate on those.

17 Q Okay. But the -- but that box was not filled out in  
18 the -- the other forms; correct?

19 A Which other forms are you referring to?

20 Q There are some other forms where -- where the tampering  
21 box was not filled out; is that correct?

22 A I believe in the evidence that's provided, yeah, there --  
23 there were a few of the chain of custodies that that was left  
24 blank.

25 Q Okay. But if you weren't the one to fill out that

1 document, you wouldn't have any reason to know what happened  
2 there?

3 A Correct, yeah. I wasn't the officer who did the removal,  
4 so I'm not sure why that was not indicated.

5 MS. STAFT: I don't have any further questions, Your  
6 Honor. Thank you.

7 THE COURT: Thank you.

8 MS. STAFT: If I could just retrieve those exhibits?

9 THE COURT: Yes.

10 Mr. Schmidt, if I understand correctly, you have a  
11 small bag that the patch goes into, and one of the bar code  
12 sealers, one of the seals with the bar code go onto that. And  
13 then the second one's supposed to go on the secondary bag, and  
14 then that secondary larger bag also gets sealed with this long  
15 strip?

16 THE WITNESS: Yes, correct, yeah.

17 THE COURT: All right. So if -- well, this would be  
18 actually a question for the Doctor, probably, but when that  
19 seal is broken, do you know if -- what happens to it, if you  
20 follow me?

21 THE WITNESS: So I do know that they won't test --  
22 like the Doctor stated, I believe that they won't test if that  
23 seal is broken. And they'll send back that they -- they were  
24 unable to test due to the breach in that seal.

25 THE COURT: Yeah. I mean, if the seal is opened, is

1 it possible, then, that there's not a number on the bag, a  
2 readable number on the bag?

3 THE WITNESS: Which bag are you referring to, the  
4 larger or the smaller one?

5 THE COURT: The larger secondary bag.

6 THE WITNESS: So there's this bar code that's placed  
7 on it, one of the bar codes --

8 THE COURT: Well, but, in two of our exhibits here  
9 today, it does not appear that a second bar code was put on the  
10 secondary bag. So I guess my question is, is if -- if you  
11 know; you may not -- when they open that seal, does that then  
12 destroy the identification number on that bag?

13 THE WITNESS: That would be a question, I believe,  
14 for the lab. But if you're referring to if we placed that bar  
15 code number directly under the security seal -- if I had the  
16 bags, it would be easier to explain. But we typically leave  
17 enough space to where when they tear that seal, it would not  
18 interfere with that bar code number.

19 THE COURT: That's how you would leave the  
20 identification number on the --

21 THE WITNESS: Right.

22 THE COURT: -- secondary bag?

23 THE WITNESS: Yeah.

24 THE COURT: Okay, thank you. I have no further  
25 questions. Anything further for your witness, Mr. Collins?

SCHMIDT - REDIRECT

1 MR. COLLINS: Well, I need some clarification now. I  
2 just want to make sure that I am tracking.

3 REDIRECT EXAMINATION

4 BY MR. COLLINS:

5 Q First, just so we're -- so that we're talking about the  
6 same things, we've been referring to bar code stickers, and  
7 each -- those would be under 23, 24, 25. And those have the  
8 same specimen number that's on the form preprinted; correct?

9 A Correct. And those bar codes specifically have -- because  
10 we don't utilize those bar codes for anything, aside from  
11 the -- the indication of what chain of custody form they are.  
12 So I believe they're more use for the lab, itself.

13 Q And then there is a separate sticker that doesn't  
14 conveniently have a number next to it, but perhaps it's 26,  
15 that I'll refer to as the security seal; correct?

16 A Correct.

17 Q And that, too, bears the same specimen number from the  
18 form, and that's reflected on the three separate bar codes;  
19 correct?

20 A Correct.

21 Q As well as the bar code at the bottom, looks like?

22 A Yes, correct. So on a typical chain of custody, I count  
23 six of the same number indicating that it's associated with  
24 this chain of custody, all the same number.

25 Q So then when you -- back to when you process a sweat



SCHMIDT - REDIRECT

1 patch, you've removed it, you've filled out whatever, you put  
2 the sweat patch into its own plastic bag --

3 A Correct.

4 Q -- and onto which, then, you take one of the bar code  
5 stickers and affix that to that inner -- or that small plastic  
6 bag?

7 A Correct.

8 Q Then you take that plastic bag with the bar code, and  
9 insert that into another envelope?

10 A Correct.

11 Q And --

12 A And we place the Ply 2 copy in that envelope, as well. So  
13 there's no contamination of the sweat patch, itself.

14 Q And onto that, is that where you place the security seal?

15 A Yes.

16 Q Binding the two ends together so that there would be  
17 evidence of someone accessing the inner envelope; correct?

18 A Correct. And the inner one has an adhesive material just  
19 to make sure that the patch doesn't fall out of it, but there's  
20 no seal on that secondary, the smaller of the bags that's  
21 inside the larger one.

22 Q And then the -- on occasion, you do apply or did apply in  
23 this case, another bar code sticker. Where would that -- where  
24 would you or the other officer have applied that in the normal  
25 course of processing?

1 A So -- yeah, so one's on that smaller bag, and then we  
2 would just place it anywhere. It's a clear bag. We would --  
3 we would place it anywhere on that bag indicating the number.

4 Q So it's a redundancy to the security seal with the unique  
5 number; is that correct?

6 A I'm not sure I understand your --

7 Q I mean, you have the number, unique identifying specimen  
8 number on the security seal?

9 A Correct.

10 Q And that is used to seal the second larger envelope.

11 A Uh-huh.

12 Q And then you have -- if you put another bar code, it would  
13 just simply be a repeat of the same number; is that correct?

14 A Correct, yeah. So there's no difference in any of these  
15 bar codes. I'm not sure -- that's, I believe, a question for  
16 the lab, specifically what they use those for. But for us, the  
17 main concern is that make sure that security seal is on the bag  
18 and at least one of these bar codes is applied.

19 Q And to your -- based upon your training and experience, if  
20 this security seal, when it arrives at the laboratory, has been  
21 breached, opened, the lab will not conduct an analysis, it will  
22 reject it; correct?

23 A Correct.

24 MR. COLLINS: I have no other questions, Your Honor.

25 THE COURT: Mr. Schmidt, is the small bag sealed,

1     that has the sweat patch in it?

2             THE WITNESS:   So it's -- it doesn't have a seal  
3     specific on it, but it has an adhesive material kind of like  
4     maybe an envelope, but we would peel that off so the patch,  
5     itself, wouldn't fall out.

6             THE COURT:    So it is sealed, like an envelope?

7             THE WITNESS:   Yes, yeah.   Essentially, it would be  
8     like an envelope sealed.

9             THE COURT:    Okay.   So the envelope with the patch in  
10    it and Ply 2 goes in the secondary bag?

11            THE WITNESS:   Yes.   And if the Court would want a  
12    reference, I'd be happy to show the Court the specific bags to  
13    get an idea.

14            THE COURT:    That's okay.   All right.   Thank you.  
15    Anything further, Ms. Staft?

16            MS. STAFT:    No, Your Honor.

17            THE COURT:    Okay.   Thank you; you can step down.

18            THE WITNESS:   Okay.   And where did Exhibit 7 go?

19            MR. COLLINS:   Give it to the Court, please.

20            THE COURT:    Thank you.

21            (Witness excused)

22            THE COURT:    All right.   Any further witnesses for the  
23    Government?

24            MR. COLLINS:   No, Your Honor.

25            THE COURT:    Any witnesses for the defense?

1 MS. STAFT: No, Your Honor.

2 THE COURT: Argument, Mr. Collins? You can -- can  
3 stay seated. That's fine.

4 MR. COLLINS: Sorry, old habits. Your Honor, I would  
5 submit that the Probation Office has supported its petition  
6 that the defendant, Mr. Yang, contrary to the conditions of his  
7 supervision, ingested controlled substances, which is  
8 corroborated by the laboratory analysis upon which they relied  
9 in submitting their reports. We have discussed at length  
10 multiple Plies, but I leave it to the Court to decide whether  
11 the chain of custody has been broken.

12 THE COURT: All right. Ms. Staft?

13 MS. STAFT: Thank you, Your Honor. I -- I do think  
14 there are significant problems with the -- the veracity of the  
15 results here, seeing as though we've encountered multiple  
16 problems and irregularities in the -- in the documentation  
17 regarding these samples. For instance, some specimens were not  
18 properly labeled when -- when collected and shipped to the lab,  
19 as indicated by -- by in at least two instances, the -- we have  
20 two stickers with the bar codes and numbers remaining on the  
21 Ply 1 forms, which shows that those -- you know, the bags that  
22 were sent to the lab were not properly labeled. We don't have  
23 documentation of -- regarding who handled the specimen from the  
24 time -- any of the specimens from the time that they were  
25 collected to the time when they were opened and processed by --

1 by the lab. There's no indication of who -- who shipped them,  
2 where they were sitting during -- during any lag in -- in  
3 shipment, you know, who had access to that, to the facility  
4 where they were being stored, any of that documentation to  
5 ensure an unbroken -- a reliable chain of custody. So I think  
6 that this presents -- that presents problems.

7           And significantly, the tampering box is required to  
8 be filled out in each of these forms, and in every single case,  
9 but on many of the samples, there is either no documentation  
10 whatsoever as to whether the patch appeared to be tampered with  
11 or compromised, so it's possible that -- that it could have  
12 been tampered with or compromised but it's just -- there's just  
13 no record or indication as such.

14           And in, additionally, some other instances, we have a  
15 positive indication that the -- that the patch did appear to be  
16 tampered with or -- or compromised, and certainly, it doesn't  
17 make sense that that would be a required -- that that  
18 information would be required on every single form if that  
19 couldn't potentially lead to false positive or otherwise  
20 undermine the reliability of the -- of the test results. So  
21 while the lab could still perform their -- their test, that  
22 doesn't obviously foreclose the possibility of -- of  
23 contamination and doesn't indicate, necessarily, that the  
24 result of the test, that the metabolites that they found in the  
25 patch did, indeed, come from -- come from Mr. Yang.

1           So for all those reasons, I -- I think that there is  
2 insufficient evidence to establish a violation.

3           THE COURT: You don't think the Government's met  
4 their burden by preponderance of the evidence?

5           MS. STAFT: Your Honor, I -- I will -- I will concede  
6 that it is -- that's a, you know, a close call, but -- since it  
7 is a lower -- a lower standard. However, I think with these  
8 irregularities and the -- the indications of, you know, the  
9 patches being compromised, and not knowing what happens to  
10 the -- to the patches along the way, that it calls into  
11 question these results.

12           THE COURT: Well, my review of these, it is  
13 Government's Exhibit 5 and Government's Exhibit 6 that had no  
14 check on whether they appeared to be tampered with or  
15 compromised. Now, I believe there was testimony from  
16 Dr. Kabulski that the test would not be done if -- if the patch  
17 appeared to be tampered with or compromised in a way that would  
18 affect a test result. Do you have any challenge to that  
19 testimony, Ms. Staft?

20           MS. STAFT: Your Honor, I don't believe he said that  
21 the -- the test wouldn't be done if -- if the patch appeared to  
22 be tampered with or compromised. I believe what he said is  
23 that only if the tape was still attached to the patch would  
24 they reject it for -- for testing, but they do no further  
25 inquiry as to any other kind of possible compromising or

1     tampering of the patch.

2             THE COURT:   He was asked, though, like on  
3     Government's Exhibit 4, where it said the patch was broken up  
4     and adhesive seemed to be peeled, if that would affect the test  
5     result.   And he said no, is my recollection.   Do you have a  
6     different recollection?

7             MS. STAFT:   Your Honor, my recollection is that he  
8     said that they could -- that it didn't affect their ability to  
9     test the patch and to test the -- the substances that were on  
10    that patch and the state that they received it.   However, it  
11    didn't -- but they didn't have a way -- it doesn't say anything  
12    about what happened to the patch previously.

13            THE COURT:   All right.   Mr. Collins, do you have any  
14    response?

15            MR. COLLINS:   I do, Your Honor.   And please take this  
16    in the vein in which it is intended, because I --

17            THE COURT:   That sounds ominous.

18            MR. COLLINS:   Well, it does, because it sounds as if  
19    Ms. Staft was making a misrepresentation, but I don't want to  
20    ascribe that to be a misrepresentation of the record.   I think  
21    it's the fact that we've had a break that we might not recall  
22    what was testified; that's all.

23            At the last proceeding, Officer Schmidt testified as  
24    to the delay about the sending off of the actual patches, that  
25    the office collects the patches, the submissions, and then

1 sends them in bulk so that that explains why there was a delay  
2 in the receipt by the laboratory. And so I just want to make  
3 that clear. It may be a recollection, not a misrepresentation.

4 As to the chain of custody and the tampering, I guess  
5 one thing -- and perhaps I admit that I failed to develop and  
6 ask, what is considered tampering versus normal wear and tear  
7 or is tampering such that it compromises the integrity, and I  
8 think that the doctor testified that there was no evidence of  
9 anything that would compromise the integrity of the sample for  
10 its being analyzed, and so I submit that while we refer to as  
11 tampering, we should be more specific and there was no evidence  
12 that it was compromised in a way that would invalidate the  
13 analysis.

14 They did -- Dr. Kabulski did testify that the  
15 laboratory will not accept samples with the adhesive still  
16 intact and would not accept for analysis any with the security  
17 seal broken, but there's no indication that any of the samples  
18 submitted were, in fact, tampered with in a way that would make  
19 the analysis questionable.

20 THE COURT: All right. Well, we have a difference of  
21 opinion as to what was said. I'm going to -- let me also ask,  
22 Mr. Collins, what's the Government's position on Violation  
23 Number 5 alleged, that -- it says here the defendant was  
24 arrested for driving while under the influence, and that's  
25 alleged to be a violation of condition, you don't commit



1 another federal, state, or local crime.

2 MR. COLLINS: At the last proceeding, Your Honor, we  
3 gave notice that we would not be --

4 THE COURT: You're dismissing that one?

5 MR. COLLINS: Yes.

6 THE COURT: Okay. Thank you. All right. So the  
7 question then is 1 through 4 and 6 and 7.

8 MR. COLLINS: Yes.

9 THE COURT: All right. Ms. Staft, are you arguing  
10 that not having Ply 2 filled out with the administrative person  
11 who -- who put it into Federal Express, that that is -- is a  
12 fatal defect, not overcome by the seals on the bags that match  
13 with the defendant's initials on them when it arrives at the  
14 lab?

15 MS. STAFT: Well, Your Honor, I think if we had  
16 additional, you know, documentation about -- or evidence  
17 regarding, you know, what -- what happens with those -- with  
18 those packages, and how they are protected and, you know, who  
19 had the -- you know, whether they were kept in a place, you  
20 know, where they -- you know, others couldn't access them,  
21 the -- I think that it may not present such big problems, but I  
22 think that with, you know, the lack of that -- that information  
23 on the chain of custody document, coupled with the lack of  
24 information about, you know, the measures taken to -- to  
25 protect the samples in the meantime do present issues.

1           THE COURT: What is your theory would have happened  
2 to the packages?

3           MS. STAFF: Well, Your Honor, you know, I think  
4 that -- I think that it is -- I mean, I would certainly  
5 obviously only be speculating. It is probably unlikely that  
6 somebody were to, you know, come in and remove the -- you know,  
7 carefully remove the -- the -- you know, the seals and  
8 contaminate it. However, we just don't have any information  
9 about that, or what happened along -- along the way. So -- but  
10 again, I do think that it is significantly more problematic  
11 that the -- that the indications regarding tampering are either  
12 not present or were -- or essentially ignored in this case. I  
13 think there is a much more significant possibility of  
14 contamination, unreliable results, when there is evidence of --  
15 of tampering or from the -- just the collection and removal  
16 process, or the application and removal process, I will submit,  
17 then, after -- after the samples are sealed in the bag.

18           THE COURT: Right now, even with the arguments that  
19 the defense has made, I think Violation Number 2 and 3 don't  
20 share any of the defects that the defense has expressed concern  
21 about. The seals were intact when they were received in the  
22 laboratory. The Government's proven that. There's no  
23 indication either of those samples were tampered with. So the  
24 remaining question on those two is whether it's really a  
25 serious defect in the Government's proof that we don't know

1 exactly how the administrative process works or where the  
2 packages are maintained in the office before they're shipped  
3 out.

4 But again, I don't hear a theory, Ms. Staft -- I  
5 mean, it sounds to me if these seals are intact, the theory  
6 would have to be that, what, somebody uses a needle to put  
7 something onto the sweat patch through the sealed documents and  
8 that somehow goes undetected? I mean, it's --

9 MS. STAFT: Your Honor, if I may, just with regard to  
10 those two, two instances that you mentioned regarding  
11 Allegations 2 and 3, with regard to Allegation 2, that is  
12 Government's Exhibit 2, I would just note that the chain of  
13 custody form has no denotation whether the patch was tampered  
14 with or compromised at all. So it is -- it is possible that it  
15 could have had that appearance, that it just was not indicated.

16 And with regard to Number 3, it is, in this instance  
17 Government's Exhibit 3, with the two patches remaining. You  
18 know, in this case, we just don't know if -- I think it would  
19 be certainly more problematic if the -- the bag that the -- the  
20 smaller bag that the patch goes into was not labeled with one  
21 of these bar codes. Unfortunately, we don't know which bag  
22 was -- was left unlabeled. I think without -- you know,  
23 without specifically labeling the patch -- the bag with the  
24 patch in it, the smaller inner bag, that that does leave open  
25 the possibility of, you know, putting the wrong patch in the

1 wrong bag. I frankly don't know, you know, their procedures to  
2 know whether they have multiple -- you know, multiple patches  
3 that they're processing at the same time and whether that could  
4 be a possibility of, you know, one patch accidentally going  
5 into one bag with the wrong form, just as a mistake.

6 THE COURT: Well, actually, I'd like to re-call  
7 Mr. Schmidt to the stand, please.

8 And I remind you, you remain under oath.

9 When you are dealing with someone and removing a  
10 sweat patch and putting it into these bags, are you ever  
11 dealing with more than one sweat patch at a time?

12 THE WITNESS: No, Your Honor.

13 THE COURT: All right. And in your experience, do  
14 you always put a -- one of these bar code stickers on the small  
15 bag?

16 THE WITNESS: In my experience, I use two bar codes,  
17 one on the smaller bag and then one on the larger bag. That's  
18 what we were -- the training procedures are.

19 THE COURT: Okay. And which of these tests did you  
20 do?

21 THE WITNESS: I can't recall off the top of my head,  
22 but it would have my initials of BRS in the removals, and then  
23 it would have my name on the application under the observer  
24 portion. I know I did do the initial one. That I know for  
25 sure.

1 THE COURT: You did the first one?

2 THE WITNESS: Yeah.

3 THE COURT: The second one -- yes, you did the second  
4 one, although we don't have Ply 1 for Exhibit 2. Who would  
5 have Ply 1? Would you all have Ply 1?

6 THE WITNESS: We would, yeah. I believe that was --  
7 I was -- I was thinking that was Ply 1, but we would have a  
8 copy of Ply 1, if the Court would need it.

9 THE COURT: All right. And you did -- your signature  
10 appears on Government's Exhibit 3, and Government's Exhibit 4,  
11 and Government's Exhibit 5. Well, now, I stand corrected.  
12 Your signature appears as the donor's -- I'm sorry.

13 Let me hand you all of these and you tell me which  
14 you did. All right?

15 THE WITNESS: So I believe this is -- so I guess I  
16 will refer to the sample ID.

17 THE COURT: Well, there should be a Government's  
18 exhibit number written in by hand on the front of the first  
19 page.

20 THE WITNESS: Oh, yes. So for Exhibit 1, I did the  
21 application and removal.

22 THE COURT: Okay. So that would mean you're the  
23 person who shipped it off?

24 THE WITNESS: No. So that would indicate that I was  
25 the officer who removed it and sealed it.

1 THE COURT: That's what I mean.

2 THE WITNESS: Yes, yeah.

3 THE COURT: You're the one who would have put it in  
4 the small bag and then the big bag?

5 THE WITNESS: Correct, yeah. As far as the shipping  
6 method, that -- they then get stored in our -- in our testing  
7 lab in the Probation Office, until they get shipped out by our  
8 admin staff.

9 THE COURT: And where are they stored?

10 THE WITNESS: They're stored in a drawer in our drug  
11 testing lab that we do the urine testing and --

12 THE COURT: And who has access to the lab?

13 THE WITNESS: Only those that have access to our  
14 office.

15 THE COURT: So people who work there and probation  
16 and pretrial service officers?

17 THE WITNESS: Yes.

18 THE COURT: And are any defendants ever left alone  
19 with those?

20 THE WITNESS: No.

21 THE COURT: And if you know what the process is that  
22 once they go in the drawer, can you tell us, if you know?

23 THE WITNESS: So I believe every Friday, the  
24 specimens that were removed during that week are then placed  
25 in -- I believe it's a manila envelope, and then they're placed

1 in a FedEx express, those kind of -- the pre-created express  
2 shipments, and they get dropped off at the FedEx box here in  
3 the building.

4 THE COURT: Okay. And the person who does that is an  
5 employee?

6 THE WITNESS: Yes. They're the admin staff of our  
7 office.

8 THE COURT: Okay. And do you know if they do it  
9 right away or are they left, like, hanging out on a desk in the  
10 front office that anybody walks by and sees.

11 THE WITNESS: I believe -- from what I recall of the  
12 procedures that I've been informed of, they -- as soon as they  
13 ship -- they place it in the shipment box, they drop it off at  
14 the FedEx box here in the building.

15 THE COURT: All right. Thank you. Okay, so  
16 Government Exhibit 1 you did the application and removal. How  
17 about 2 through 6?

18 THE WITNESS: So Government Exhibit 2, I did the  
19 application and not the removal.

20 THE COURT: Who did the removal, if you can tell?

21 THE WITNESS: That is Officer McKinstry, Samuel  
22 McKinstry.

23 THE COURT: Okay.

24 THE WITNESS: Exhibit 3, that would be Officer  
25 McKinstry who did the application and Officer Astle who did the

1 removal.

2 THE COURT: Okay.

3 THE WITNESS: Exhibit 4, I did both the application  
4 and removal. And Exhibit 5, I did the application and Officer  
5 McKinstry did the removal. Exhibit 6, Officer McKinstry did  
6 the application and Officer Castro did the removal.

7 THE COURT: Okay. Thank you. Any questions for  
8 Mr. Schmidt, Mr. Collins?

9 MR. COLLINS: No, Your Honor. Thank you.

10 THE COURT: Ms. Staft?

11 MS. STAFT: No, Your Honor.

12 THE COURT: Okay. Thank you. You can step down.

13 (Witness excused)

14 THE COURT: All right. I think with this additional  
15 testimony I'm comfortable about the chain of custody, as far as  
16 there not being an opportunity for tampering. I do want to  
17 check and see if there's any case law that suggests it's not  
18 sufficient when something arrives in a lab with a seal -- seal  
19 intact that has the defendant's initials on it. I think that  
20 that is probably an excellent protective measure. And I do  
21 need, I guess at this point, to check the transcript as to what  
22 the doctor said about tampering. I think that the point on the  
23 Ply 1, I don't think it necessarily means or should be read to  
24 mean that it was tampered with or compromised to such an extent  
25 that it can't result in a -- a valid test. But since we have a



1 difference of opinion on exactly what the doctor said on that  
2 topic, I will consult the transcript before I make a ruling.

3 Anything further for today, Ms. Staft?

4 MS. STAFT: Your Honor, not on this topic. We do  
5 have a -- just a quick collateral matter that I'd like to  
6 address.

7 THE COURT: All right. What's that?

8 MS. STAFT: Your Honor, regarding Mr. Yang's  
9 conditions of release, it's my understanding that -- that  
10 Probation is in support of dropping any third-party supervision  
11 requirement, since Mr. Yang has been doing well, and more  
12 importantly, has obtained employment. So, you know, the intent  
13 is to allow him to -- to attend that without needing any  
14 third-party supervision.

15 I had intended to, after consultation with Probation  
16 Officer Schmidt and Mr. Collins, to ask the Court to modify it  
17 to remove the third-party requirement. And to be clear, my  
18 understanding is Mr. Collins takes no position, but that he's  
19 not, you know, specifically agreed.

20 However, in reviewing the -- the conditions at  
21 Document -- or Docket 128, it actually appears that the  
22 third-party supervision box wasn't filled out. So I don't  
23 think that we actually need to -- to modify the current  
24 conditions, but I did just want to -- to clarify for the record  
25 whether that was permissible for Mr. Yang to be unsupervised by

1 a third-party.

2 THE COURT: Mr. Schmidt, what's your position?

3 OFFICER SCHMIDT: Yes, Your Honor. I've been in  
4 contact with Immigrations, the assigned officer, and he has  
5 provided me adequate proof that he is now -- legally, he's able  
6 to gain employment under his immigration status, so Probation  
7 does not -- is for the support of the removal of the  
8 third-party.

9 THE COURT: All right. Then that's fine. That's  
10 agreeable.

11 MS. STAFF: Thank you.

12 THE COURT: There doesn't need to be any change in  
13 the order, itself.

14 All right. I will order a transcript and will issue  
15 a written opinion, probably a very short one, after I have a  
16 chance to review that transcript. It is somewhat difficult for  
17 all of us, I think, when the hearing is stretched out over a  
18 month.

19 Thank you. Court will stand in recess.

20 DEPUTY CLERK: All rise. This matter is adjourned.  
21 This court now stands adjourned subject to call.

22 (Proceedings concluded at 4:08:07 p.m.)  
23  
24  
25

## 1 CERTIFICATE

2 I, R. Joy Stancel, Federal Official Realtime Court  
3 Reporter in and for the United States District Court for the  
4 District of Alaska, do hereby certify that the foregoing  
5 transcript is a true and accurate transcript from the digital  
6 record in the above-entitled matter and that the transcript  
7 page format is in conformance with the regulations of the  
8 Judicial Conference of the United States.

9 Dated this 11th day of June, 2021.

10 /s/ R. Joy Stancel

11 \_\_\_\_\_  
12 R. JOY STANCEL, RMR-CRR  
13 FEDERAL OFFICIAL COURT REPORTER  
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